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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION NO.16407/1996

BETWEEN:-

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M/s.Dempo Dairy Industries Ltd.,
Asangi, Jamakhandi,
District: Bijapur,
Represented by its
Managing Director.

..PETITIONER

(By Sri S.V.Shastrri, Advocate)

AND:-

1. The Presiding Officer,
Labour Court, Bijapur.
2. S.T.Moteiro,
S/o Thomas, aged 51 years
C/o Dempo Dairy Workers
Union, Bandichawl
Sanivarpet,
Banagatti,
District: Bijapur.

..RESPONDENTS

(By Sri Ramakrishna, for R1, HCGP
Sri M.C.Narashimhan, for R2, Advs.)

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This W.P. filed u/a 226 & 227 of the Constitution of India praying to quash Annex-E dt.22.1.97 and etc.

This W.P. coming on for preliminary hearing in 'B' group this day, the Court made the following:-

O R D E R

The petitioner challenges Annexure-E award. The second respondent is the worker employed by the petitioner as a clerk, since 19.11.1978. On 29.5.1980, the worker was called upon to despatch 85 bagas of Skimmed milk through M.G.Brothers Lorry Service. It is alleged that he did not carryout the instructions instead, he despatched only 84 bags. A memo was issued to the worker and the worker submitted his explanation stating that he would pay the amount towards the missing bag. It is alleged by the management that as the explanation was unsatisfactory, an enquiry was held and on the basis of the enquiry report, the worker was dismissed from service. He raised a dispute before the Labour

Court. Before the Labour Court, after filing the claim statement, the worker did not appear. The Labour Court came to the conclusion that dismissal of the worker was valid and it rejected the claim of the worker. The worker challenged the said award before this Court in W.P.No.5141/85. This Court set aside the order of the Labour Court and directed matter to be remanded for fresh consideration. After the matter was remitted back, to the Labour Court, both the management as well as the worker led evidence to defend their respective case. The management contended that they have lost confidence with the worker. A preliminary issue regarding the validity of the domestic enquiry was framed. The Labour Court held that domestic enquiry was fair and proper. It thereafter set aside this order of dismissal. In doing so, the Labour Court called upon the management to reinstate the worker with full backwages and continuity of service. This award is challenged contending inter alia that the same is illegal because according to the petitioner

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when once the Labour Court holds that domestic enquiry is fair and proper it ought not to have awarded reinstatement with backwages. This award is challenged by the management in this proceedings.

2. I have heard Mr.S.V.Shastry, learned Counsel for the petitioner as also respondents. I do not think that this Court need interfere with the award of the Labour Court in so far as it relates to reinstatement is concerned. Merely because the misconduct is proved it does not always warrant the imposition of the extreme punishment of dismissal. The worker had offered to make good tthe loss. But the management was not fair enough to accept the same and it imposed the punishment of dismissal. The finding of the Labour Court in so far as it setasides the dismissal has to be upheld.

3. But I do not think that the Labour Court is justified in awarding full backwages to the worker. The worker had admitted the guilt of not delivering one bag of skimmed

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milk. The management is certainly entitled to impose appropriate punishment for this misconduct. Such misconduct should not/^{be}so unpunished. Considering this aspect at this distany of trial, I feel that the appropriate punishment in this behalf would be to deny a portion of backwages. Taking into account all circumstances, I feel that appropriate course would be to modify the award of the Labour Court in so far as it relates to backwages. I setaside the award in this behalf. While confirming the award of reinstatement, I hold that the worker will be entitled for 50% backwages as against full backwages awarded. Writ Petition disposed of as above.



Sd/-
JUDGE